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C O N F I D E N T I A L SECTION 01 OF 04 THE HAGUE 002867

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TAGS: BK HR KAWC NL PHUM PREL SR ICTY

SUBJECT: ICTY: LORD OWEN'S TESTIMONY A MIXED BAG FOR
PROSECUTION'S CASE AGAINST MILOSEVIC

REF: THE HAGUE 2835

Classified By: Clifton M. Johnson, Legal Counselor, for reasons 1.5(D)
and 1.6.

11. (C) Summary: Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia (ICTY) heard testimony from Lord David Owen the first week of November. As an international negotiator, Lord Owen insisted that the Trial Chamber call him as a neutral witness rather than being called by the Prosecution. His testimony in some ways tracked his self-proclaimed neutral position, sometimes characterizing events in ways that undercut the Prosecution's case. For lead prosecutor Nice, however, Owen provided helpful evidence in building a case of omission against Milosevic (see para 11). The Trial Chamber also heard testimony from a protected witness testifying to crime-based events largely in closed session. Additionally, Milosevic completed his cross-examination of David Harland. The trial chamber also issued an order allowing it to sit in session with a judge absent due to health related issues. End summary.

Lord Owen's Testimony

12. (C) On November 4 and 5, the Trial Chamber heard from Lord David Owen, former Bosnia peace mediator and one-time British foreign secretary. He initially turned down a request by the Prosecution to appear before the court in the Milosevic trial, refusing even to speak with lead prosecutor Geoffrey Nice about such testimony and preferring to be called by the Trial Chamber itself in order to maintain his supposed neutrality in the matter. Lord Owen emphasized his view that evil was committed on all sides, though more so by Bosnian Serbs than Bosnian Croats or Muslims. He repeatedly stated that blame for the events in the Balkans is carried by many parties including the United Nations Security Council and even himself. Senior prosecutor Dermot Groome commented to Embassy legal officers that Owen was a very credible witness, especially since he testified that he held himself to be partially responsible for the mass murders that occurred in Srebrenica.

13. (SBU) Owen submitted a 42 page statement to the prosecution which outlined his role as an international negotiator in the Balkans and his experiences with the Accused in that role, largely drawing upon relevant portions of his book, Balkan Odyssey. The statement provided detailed accounts of the relationships that Milosevic had with political rivals and other leaders including, among others, Corsic, Panic, Karadzic, Mladic and Krajisnik. Lord Owen characterized Milosevic as "not fundamentally racist -- he's a pragmatist who wanted Serbs to be in the majority. I don't think he was an ethnic purist."

14. (SBU) Milosevic and Owen established a cordial and respectful rapport during the cross-examination. Milosevic was composed and effective during the cross-examination, adroitly leading the witness to praise the "peacemaker" role Milosevic played in the Balkans. Indeed, Owen offered occasional praise and justification unprompted by the Accused. At one point, when Milosevic offered that great atrocities were being committed against the Serbs and the JNA was trying to prevent further conflict, Lord Owen side-stepped the question by stating that he wasn't sure whether Milosevic was helpful in that case, but that he was very helpful in the Vance-Owen peace negotiations. Further, Owen suggested that Milosevic had a "justified grievance" against the West since they accepted maps that were drawn in 1944 rather than ones in 1991 that reflected the actual ethnic populations.

15. (SBU) Owen also cast Milosevic as someone committed to, and an active participant in, the peace processes. However, he did suggest that Milosevic did not do enough for peace. Owen's chief complaint against Milosevic was that he had not put enough pressure on the Bosnian Serbs to accept the Vance-Owen peace plan. He stated that by refusing to threaten the Bosnian Serbs' supply of oil and weapons flowing

from Serbia when they rejected the peace plan, Milosevic was responsible for delaying the peace process for two and a half years. Lord Owen stated that he wished Milosevic had used his influence earlier to support peace.

¶16. (SBU) Owen contrasted Tudjman's "blatant" use of Croatian Army forces in Bosnia with Milosevic's "clever" way of using Serbian forces in the war. Yet Owen did some serious damage to Milosevic regarding the presence of JNA troops in Bosnia. Milosevic claimed that once the independence of Bosnia was recognized that no JNA troops were active in Bosnia, except for one small exception. Owen dismissed this statement saying that the JNA was involved and that Serbs not born in Bosnia were active there. He stated that JNA were more subtle in disguising their presence than their Croatian counterparts.

¶17. (SBU) During the cross-examination, Owen reserved his harshest comments for Milosevic's political rivals. He suggested that Milosevic lost much power and influence over the Bosnian Serb leadership after Karadzic revoked his signature from the Vance-Owen peace plan. He commented that Karadzic signed a lot of documents while holding and espousing opposite views in other forums. Owen showed that he holds particular contempt for Mladic. In responding to Milosevic's assertion that Mladic was not capable of the atrocities in Srebrenica, Owen stated that he did not share this view of Mladic and that there was a "brutality about the man." He also stated that Mladic was a racist and that he could have ordered, been complicit, or acquiesced to a massacre of Muslims.

¶18. (SBU) Owen went on to say that Milosevic was very helpful in preventing Mladic from taking Srebrenica in 1993. He stated that Milosevic was "well aware of the dangers" if Serbs went into Srebrenica, given the historic tensions and conflicts there, and even referred to the risk of a "massacre." There was similar recognition of the risk in 1995. Owen lamented that the events in Srebrenica in 1995 was the worst episode of the conflicts in the Balkans and he partially holds himself responsible for not telling more people of the danger. He also placed part of the blame on the Security Council, which knowingly declared Srebrenica a safe area without providing the requisite troops.

¶19. (SBU) On another issue Owen partially came to the Accused's defense stating that Milosevic gave up the idea of a "Greater Serbia" after 1993. He noted that as a pragmatist, Milosevic realized that once the Vance-Owen peace plan started that some Serbs would have to live outside of Serbia. When Milosevic pushed the point to say that the leaders of Republica Srpska also never held a "Greater Serbia" view, Owen responded that this was a reasonable view, but that he personally does not accept that interpretation. Owen went on to say that Milosevic and others likely had aspirations for a different map.

¶10. (SBU) Owen ended his cross-examination by Milosevic with a lofty statement that "sometimes leaders must lead their people against public opinion and against ultra-nationalistic views." He went on to say that, "some of the greatest acts have occurred where leaders have acted against the majority opinion." However, the Amici, through their cross-examination, pointed out that many of the positions for peace that Milosevic took were politically unpopular and even in some cases resulted in substantial loss of influence. The Amici also pointed out that after Pale had rejected the peace plan, the leaders in Pale felt they could reject Belgrade and could make their own political decisions. Owen seemed to accept this characterization and even when so far as to add that the Amici's line of questioning showed the "wisdom of the chambers to have the Amici to insure a fair trial."

¶11. (C) Lead Milosevic prosecutor Geoffrey Nice, while acknowledging the mixed nature of Owen's testimony was confident that it was helpful to the prosecution. He said that Owen demonstrated that the risk of a massacre in Srebrenica was apparent from 1993, testified that Milosevic himself had alluded to the danger of a "massacre" in 1993, and showed that the risk was recognized again in 1995. Against this backdrop of awareness was testimony that during this period the VRS was supported by Milosevic and Karadzic had lost control over Mladic leaving Milosevic as his main influence. For Nice all of this added up to, essentially, a case of omission against Milosevic. Nice said that he would pursue evidence of direct responsibility where he could find it but that for legal purposes a case based on the accused's failure to act would suffice. explained the value of Owen's testimony in a conversation with Embassy legal officers.

Other Testimony -- Nov. 5-6

¶12. On November 5, the Trial Chamber also heard from a protected witness, identified as B-1531, who offered

crime-based testimony. Much of the witness' testimony was taken in closed session. On November 6, the Trial Chamber heard the completion of the cross-examination of David Harland, UN civil and political affairs officer in Sarajevo. Harland's evidence-in-chief and the start of the cross-examination occurred on September 18, 2003. During his initial testimony, he spoke of his experiences during negotiations with the leaders in Pale, notably Dr. Karadzic and General Mladic, and of his experience with shelling and sniper activity in Sarajevo. He also spoke about the command structures in Pale and related his experiences that showed how Pale could control snipers and paramilitary units when they wanted to. He also spoke about the methods used by the Bosnian Serbs when they ethnically cleansed Muslim towns. In contrast to the tone of Owen's testimony, Harland described Milosevic as "holding the hand" of Pale through his influence on the military. He testified that the Pale leadership was frustrated with Milosevic for staying their hand in many cases. He later recounted how a major report he researched and drafted for the UN Secretary General made no connection between the massacres in Srebrenica and Milosevic, yet he concluded personally that Milosevic must have known about the military actions to take the town.

¶13. (SBU) Harland in general testified to the support Milosevic and the JNA provided Pale. He spoke about how General Mladic would openly acknowledge that he had 100s of tanks supplied by the JNA and how these forces were used to ethnically cleanse Muslim towns. Harland also stated that there was a clear link between Belgrade and the Bosnian Serb Army. He noted that at critical moments, Belgrade was able to influence the behavior of the Bosnian Serb Army. Harland concluded, given that Milosevic could assert control over the Bosnian Serb Army when he wanted it, that Milosevic must have acquiesced to the shelling in Sarajevo, the sniping, the attacks on safe areas, and even the massacre that followed the fall of Srebrenica. He claimed that Milosevic could have done vastly more to prevent these attacks given that the Bosnian Serbs were almost entirely dependent on support from Serbia. Harland charged that the cause of peace was not advanced by "giving the Bosnian Serbs the full military support they needed to secure, ethnically cleanse, and hold very large territories."

¶14. (SBU) On November 6, Milosevic concluded his cross-examination of David Harland. During this segment of the cross-examination the Accused asked questions primarily regarding the circumstances in Sarajevo. When Milosevic asserted that Serbs "allowed" Muslims to leave their enclaves, whereas the Muslims did not allow the Serbs the freedom to leave, Harland corrected Milosevic stating that the Serbs "forced" the Muslims to leave. Harland also discussed the varied treatment that different ethnicities received through the various controlled areas of Sarajevo. He also addressed the two Makale Market shellings. Milosevic made his usual argument that the preliminary report concluded that it was a Muslim attack. Harland noted that later reports could not conclude the source, since it was too close to the confrontation line. However, he noted that for shells that they could detect the source almost all shells falling on the Muslim side came from the Serb lines.

Judge Robinson Ill

¶15. (C) On October 21, the Trial Chamber issued an order under Rule 15 bis allowing the Trial Chamber to sit in the absence of Judge Robinson due to medical reasons on November 25 and 27 and on December 2, 3, 4 of 2003. While Embassy is unfamiliar with the nature of Judge Robinson's illness, prosecutor Dermot Groome commented to Embassy legal officers that Judge Robinson's health may further impact the Milosevic case in the future.

¶16. (C) Comment: In his courtroom confrontation with David Owen, Milosevic demonstrated a feistiness and focus consistent with the observation of those who see Milosevic regularly (reftel) that he tends to relish the opportunity to cross witnesses he views as his "peers". His vigorous, engaging cross-examination brought out the complex nature of Owen's views, which were not altogether helpful to the prosecution. In that sense, the accused can claim this witness as a success. Still, the negatives remain for Milosevic, especially Owen's testimony concerning the presence of JNA troops in Bosnia and the fact that Milosevic was aware of the risk of a massacre in Srebrenica. Ultimately Owen's value to the prosecution will depend on whether other witnesses can fill in the gaps and whether the chamber is prepared to convict Milosevic on a case based largely on acts of omission. The coming weeks will see additional testimony from witnesses, including former State President Boris Jovic who will testify next week, that will present an even more mixed bag for the prosecution. End comment.

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